

AMENDED IN SENATE APRIL 15, 2008

AMENDED IN SENATE MARCH 25, 2008

SENATE BILL

No. 1732

Introduced by Senator Romero

(Principal coauthor: Assembly Member Lieber)

(Coauthor: Senator McClintock)

(Coauthor: Assembly Member Portantino)

February 22, 2008

An act to amend Section 54952.2 of, and to add Section 6252.7 to, the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1732, as amended, Romero. Local agencies.

(1) The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, with an exception for an authorized teleconference. An appellate court in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533 held that a violation of this prohibition occurs only if a series of meetings by members of a body results in a collective concurrence.

This bill would instead prohibit a majority of members of a legislative body of a local agency from using, outside a meeting authorized by the act, a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. It also would state the Legislature's declaration that it disapproves

the holding of the court in the case named above to the extent it construes the prohibition on serial meetings and would state its intention that the changes made by this bill supersede that holding. It would also ~~state the Legislature's intention~~ *provide* that the changes made by this bill ~~do not prevent a local agency staff official, employee, or individual~~ *shall not be construed as preventing any person, including, but not limited to, any employee or official of a local agency,* from engaging in separate conversations or communications, outside of a meeting authorized by the Brown Act, with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, ~~provided that the local agency staff official, employee, or individual~~ *if that person* does not communicate to members of the legislative body the comments or position of any other member or members of the body.

(2) The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure. The Ralph M. Brown Act provides that, notwithstanding any other provision of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act unless exempt from disclosure under that act. The Ralph M. Brown Act requires that these writings be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

This bill would provide that, notwithstanding any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature hereby declares that it
2 disapproves the court’s holding in *Wolfe v. City of Fremont* (2006)
3 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the
4 prohibition against serial meetings by a legislative body of a local
5 agency, as contained in the Ralph M. Brown Act (Chapter 9
6 (commencing with Section 54950) of Part 1 of Division 2 of Title
7 5 of the Government Code, to require that a series of individual
8 meetings by members of a body actually result in a collective
9 concurrence to violate the prohibition rather than also including
10 the process of developing a collective concurrence as a violation
11 of the prohibition.

12 (b) It is the intent of the Legislature that the changes made by
13 Section 3 of this act supersede the court’s holding described in
14 subdivision (a).

15 ~~(c) It is the intent of the Legislature that the changes made by~~
16 ~~Section 3 of this act do not prevent a local agency staff official,~~
17 ~~employee, or individual from engaging in separate conversations~~
18 ~~or communications, outside of a meeting authorized by the Ralph~~
19 ~~M. Brown Act, with members of a legislative body in order to~~
20 ~~answer questions or provide information regarding a matter that~~
21 ~~is within the subject matter jurisdiction of the local agency,~~
22 ~~provided that the local agency staff official, employee, or individual~~
23 ~~does not communicate to members of the legislative body the~~
24 ~~comments or position of any other member or members of the~~
25 ~~legislative body.~~

26 SEC. 2. Section 6252.7 is added to the Government Code, to
27 read:

28 6252.7. Notwithstanding Section 6252.5 or any other provision
29 of law, when the members of a legislative body of a local agency
30 are authorized to access a writing of the body or of the agency as
31 permitted by law in the administration of their duties, the local
32 agency, as defined in Section 54951, shall not discriminate between
33 or among any of those members as to which writing or portion
34 thereof is made available or when it is made available.

35 SEC. 3. Section 54952.2 of the Government Code is amended
36 to read:

37 54952.2. (a) As used in this chapter, “meeting” means any
38 congregation of a majority of the members of a legislative body

1 at the same time and location, including teleconference location
2 as permitted by Section 54953, to hear, discuss, deliberate, or take
3 action on any item that is within the subject matter jurisdiction of
4 the legislative body.

5 (b) (1) A majority of the members of a legislative body shall
6 not, outside a meeting authorized by this ~~act~~ *chapter*, use a series
7 of communications of any kind, directly or through intermediaries,
8 to discuss, deliberate, or take action on any item of business that
9 is within the subject matter jurisdiction of the legislative body.

10 (2) *Paragraph (1) shall not be construed as preventing any*
11 *person, including, but not limited to, any employee or official of*
12 *a local agency, from engaging in separate conversations or*
13 *communications outside of a meeting authorized by this chapter*
14 *with members of a legislative body in order to answer questions*
15 *or provide information regarding a matter that is within the subject*
16 *matter jurisdiction of the local agency, if that person does not*
17 *communicate to members of the legislative body the comments or*
18 *position of any other member or members of the legislative body.*

19 (c) Nothing in this section shall impose the requirements of this
20 chapter upon any of the following:

21 (1) Individual contacts or conversations between a member of
22 a legislative body and any other person, *including, but not limited*
23 *to, any employee or official of a local agency* that do not violate
24 subdivision (b).

25 (2) The attendance of a majority of the members of a legislative
26 body at a conference or similar gathering open to the public that
27 involves a discussion of issues of general interest to the public or
28 to public agencies of the type represented by the legislative body,
29 provided that a majority of the members do not discuss among
30 themselves, other than as part of the scheduled program, business
31 of a specified nature that is within the subject matter jurisdiction
32 of the local agency. Nothing in this paragraph is intended to allow
33 members of the public free admission to a conference or similar
34 gathering at which the organizers have required other participants
35 or registrants to pay fees or charges as a condition of attendance.

36 (3) The attendance of a majority of the members of a legislative
37 body at an open and publicized meeting organized to address a
38 topic of local community concern by a person or organization other
39 than the local agency, provided that a majority of the members do
40 not discuss among themselves, other than as part of the scheduled

1 program, business of a specific nature that is within the subject
2 matter jurisdiction of the legislative body of the local agency.

3 (4) The attendance of a majority of the members of a legislative
4 body at an open and noticed meeting of another body of the local
5 agency, or at an open and noticed meeting of a legislative body of
6 another local agency, provided that a majority of the members do
7 not discuss among themselves, other than as part of the scheduled
8 meeting, business of a specific nature that is within the subject
9 matter jurisdiction of the legislative body of the local agency.

10 (5) The attendance of a majority of the members of a legislative
11 body at a purely social or ceremonial occasion, provided that a
12 majority of the members do not discuss among themselves business
13 of a specific nature that is within the subject matter jurisdiction of
14 the legislative body of the local agency.

15 (6) The attendance of a majority of the members of a legislative
16 body at an open and noticed meeting of a standing committee of
17 that body, provided that the members of the legislative body who
18 are not members of the standing committee attend only as
19 observers.